

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ERNEST ANDRADE-BARTELDES,

Plaintiff,

-v-

JOSE VALENCIA ET AL.,

Defendants.  
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23-cv-00495 (LJL)

ORDER

LEWIS J. LIMAN, United States District Judge:

The Court held a telephonic status conference in this matter on August 13, 2024.

Counsel for Plaintiff and the Class (“Class Counsel”) attended. Neither Defendant Jose Valencia (“Valencia”) nor counsel for Valencia attended.

Previously, on December 4, 2023, the Court issued a memorandum and order, certifying a conditional collective under the Fair Labor Standards Act of 1938, 19 U.S.C. § 216(b), and a class action under Federal Rule of Civil Procedure 23. Dkt. No. 61. The Court ordered Defendants to provide a class list containing the names and last known addresses of all putative class members within twenty-one days. Dkt. No. 61 at 15.<sup>1</sup> On February 23, 2024, the Court held Defendants in civil contempt for their failure to come into compliance with the December 4, 2023 Order. Dkt. No. 79. The Court ruled that contempt sanctions in the amount of \$1,000 per diem would begin to run on March 18, 2024 if Defendants failed to come into compliance. *Id.* at

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<sup>1</sup> The class is comprised of all faculty members of ASA College since January 19, 2017. *Id.* at 3.

2. Valencia wrote to the Court thereafter to state that the lawsuit should be against ASA College and not against him as an employee. Dkt. No. 83.<sup>2</sup>

On March 13, 2024, Class Counsel filed a letter stating that Valencia had provided an Excel spreadsheet containing the names, job titles, and cell phone numbers/email addresses for members of the class, but that the spreadsheet did not contain mailing addresses. Dkt. No. 85. On March 18, 2024, the Court held a telephonic status conference to discuss the class list. Class Counsel appeared at the conference. Valencia failed to appear. Mar. 18, 2024 Minute Entry. The conference was cancelled by the Court and rescheduled for August 13, 2024. On August 6, 2024, Class Counsel filed a letter indicated that he has not received a class list that complies with the Court's December 4, 2023 Order.

The Court's August 13, 2024 conference was held, in part, to determine whether additional contempt sanctions are appropriate to compel compliance. The Court requested the attendance of an attorney from the Federal Defenders of New York given the risk to Valencia that the Court would order his arrest. *See Bank of Credit & Com. Int'l (Overseas) Ltd. v. Tamraz*, 2006 WL 1643202, at \*3 (S.D.N.Y. June 13, 2006) (if a contemnor faces possible incarceration, due process requires notice and the right to counsel). A member of the Federal Defenders of New York attended the conference.

The Court adjourned the conference until September 10, 2024 at 12 PM to give Class Counsel an opportunity to present evidence that Valencia continues to be in contempt of this Court's December 4, 2023 Order and that the Court should take further action to cause Valencia

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<sup>2</sup> Valencia's letter is dated January 15, 2024, but it was docketed on March 5, 2024 and it is clear from its content that it was written after a February 23, 2024 conference that Valencia failed to attend.

to come into compliance with the Order. Such action could include the issuance of a warrant for Valencia's arrest.

Parties are directed to dial into the Court's teleconference number at 888-251-2909, Access Code 2123101, and follow the necessary prompts on September 10, 2024 at 12 PM. If that time proves inconvenient, either party may write to the Court for an adjournment. Valencia is warned that failure to attend could result in additional contempt sanctions.

Class Counsel is directed to serve a copy of this Order on Valencia forthwith and to file proof of service on the docket.

SO ORDERED.

Dated: August 14, 2024  
New York, New York



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LEWIS J. LIMAN  
United States District Judge